



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *WCS*

DATE: February 26, 1999

SUBJECT: PRE-MUR 362- First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

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FEDERAL ELECTION COMMISSION

999 E Street, N.W.  
Washington, D.C. 20463

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FEB 23 1998  
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FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

PRE-MUR: 362

DATE REFERRAL RECEIVED: 5/4/98

DATE ACTIVATED: 9/14/98

STAFF MEMBER: Jose Rodriguez  
Karen White

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Laredo National Bank, Laredo, Texas  
Gary G. Jacobs  
Mrs. Gary G. Jacobs  
Republican National Committee and  
Alec Poitevint, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 437g(d)  
2 U.S.C. § 441b(a)  
2 U.S.C. § 441f  
11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED: Referral Materials  
Disclosure Reports

FEDERAL AGENCIES CHECKED: Comptroller of the Currency

**I. GENERATION OF MATTER**

This matter was generated by a referral from the Comptroller of the Currency ("OCC"), an agency of the United States Department of the Treasury. According to the attached referral materials, the OCC's review of the 1995 financial transactions of Laredo National Bank, Laredo, Texas ("Bank" or "LNB") disclosed a reimbursement by the Bank to the Bank's president, Gary G. Jacobs, for a \$15,000 contribution to the Republican National Committee ("RNC")

which appears to violate 2 U.S.C. § 441b(a) and 2 U.S.C. § 441f. Attachment 1. Laredo National Bank is a national bank headquartered in Laredo, Texas.

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Law

The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits a national bank, or any corporation organized by authority of any law of Congress, from making a contribution or expenditure in connection with an election to any political office. *See* 2 U.S.C. § 441b(a). This section also makes it unlawful for an officer or director of a national bank to consent to such a contribution or expenditure by the national bank to any political campaign committee, and for any candidate, political committee, or other person knowingly to accept or receive a contribution prohibited by section 441b(a). *See* 2 U.S.C. § 441b.

The Act further provides that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f. *See also*, 11 C.F.R. §110.4(b). The Act defines the term "person" to include a corporation. 2 U.S.C. § 431(11). Thus, this prohibition applies to a corporation's payment, reimbursement, or other compensation to any person for his or her contribution to any federal candidate or political committee. *See* Advisory Opinion 1986-41.

Finally, the Act addresses knowing and willful violations. 2 U.S.C. §§ 437g(a)(5)(C), (6)(C), and 437g(d). During the House debates on the Conference Report for the 1976 Amendments, Congressman Hays stated that the phrase "knowing and willful" referred "to actions taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976) (remarks of Congressman Hays). The

knowing and willful standard requires knowledge that one is violating the law. See FEC v. John A. Dramesi for Congress, 640 F. Supp. 985 (D.N.J. 1986). A knowing and willful violation may be established by "proof that the defendant acted deliberately and with knowledge that the representation was false." U.S. v. Hopkins, 916 F.2d 207, 214-15 (5th Cir. 1990). An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions and their "deliberate convey[ance of] information they knew to be false to the Federal Election Commission." *Id.*

#### B. The Facts

During the normal course of reviewing the Bank's records, OCC examiners learned that on April 3, 1995, Gary G. Jacobs, the Bank's President, made a \$15,000 contribution to the RNC, which was subsequently reimbursed by the Bank. According to the RNC's disclosure reports on file with the Commission, the RNC reported that its federal account had received the contribution on April 17, 1995, as \$7,500 from Gary G. Jacobs and \$7,500 from Mrs. Gary G. Jacobs.

Based on the referral materials, the following appear to be the circumstances surrounding the contribution and reimbursement. According to the RNC's acknowledgment letter, the Bank's contribution to the RNC resulted from Mr. Jacobs' "commitment of \$15,000 for the February 9 Official 1995 Republican Inaugural Gala." Attachment 2, at 2 (redacted copy).<sup>1</sup> Following the event, on approximately March 27, 1995, Haley Barbour, Chairman of the RNC, sent the acknowledgment letter to the Bank's address requesting fulfillment of the "outstanding

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<sup>1</sup> Although the recipient's name has been redacted from the various correspondence, based on the full record we believe that the recipient of the RNC's acknowledgment letter was Mr. Jacobs.

pledge . . . as soon as possible.” *Id.* In response, on April 3, 1995, Mr. Jacobs fulfilled his commitment by making a combined \$15,000 contribution in his and his wife’s name.<sup>2</sup> The following day, “per Mr. Jacobs instructions [sic],” a disbursement request for “reimbursement of contribution to the 1995 Official Republican Inaugural Gala” was prepared. *Id.* at 3. Subsequently, on April 5, 1995, a reimbursement check was apparently sent to Paty Benavides (a Bank employee) and deposited into Mr. Jacobs’ account. Almost three years later, on February 24, 1998, Mr. Jacobs repaid \$15,000 to the Bank for the “incorrect reimbursement made by bank . . . on April 4, 1995.” *Id.* at 8. However, this corrective action was taken only after notification by OCC of the apparent illegality.

C. Analysis

1. Gary G. Jacobs

The available documentation suggests both that Mr. Jacobs was directly involved in the reimbursement of the \$15,000 contribution, and that he knew that the Bank was prohibited from contributing. Handwritten notations on the March 27<sup>th</sup> solicitation letter from Mr. Barbour suggest that Mr. Jacobs directly requested reimbursement of his and his wife’s contribution immediately after the contributions were made. The bottom left hand side of the letter contains

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<sup>2</sup> OCC’s referral did not include copies of the contribution check(s); however, because the RNC reported the combined contribution as federal, the check(s) was presumably made payable to the RNC.

the notation "Per Javier Trevino: OK to pay based on comment at bottom of this letter."<sup>3</sup> *See Id.* at 2. Below this notation appears Mr. Jacobs' initials dated April 4, 1995, the day after the contribution date. These initials appear to convey his approval of the reimbursement request. On April 4, 1995, the Bank prepared a formal disbursement request "per Mr. Jacobs instructions" for reimbursement of the \$15,000 contribution. *See id.* at 3. The reimbursement was dated April 5, 1995.

On February 24, 1998, Mr. Jacobs reimbursed the Bank for its earlier reimbursement of the \$15,000. *Id.* at 8, 9. In a memorandum accompanying this 1998 repayment to the Bank, Mr. Jacobs attempts to explain the circumstances surrounding the 1995 contribution, claiming that he did not know at the time that a reimbursement to him had been issued by the Bank. According to Mr. Jacobs' memorandum, the RNC solicited a contribution directly from the Bank. *See id.* at 9. Mr. Jacobs assertedly informed the RNC of his belief that a national bank could not contribute, but the RNC "insisted that it was legal" for the Bank to contribute. *Id.* Mr. Jacobs claims that, in response, he agreed to write a personal check for the requested contribution, pending the RNC's "opinion on the legality of LNB's ability" to contribute. *Id.* However, he further asserts that, unbeknownst to him, Bank personnel authorized reimbursement to him because of his initials on the RNC solicitation letter. *Id.* He recalls ultimately getting an "opinion letter that RNC was wrong," and asking "someone in his office to be sure that the check to RNC was [his] and not LNB funds." *Id.* It was at this time, he claims, that he first learned that he had been reimbursed for his original contribution.

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<sup>3</sup> It appears that the referenced comment at the bottom of the letter is the standard solicitation disclaimer stating, "Paid for by the Republican National Committee and the Republican National State Elections Committee. Only those contributions which do not fall under the limitations and prohibitions of the Federal Election Campaign Act will be used by the Republican National State Elections Committee." It is presently not clear why this boiler plate language is referenced as permitting the requested bank reimbursement.

However, as noted, documentation contemporaneous with the contribution contradict his version of events. Mr. Jacobs' initials on the March 27<sup>th</sup> solicitation letter suggest his direct involvement in the transactions. Aside from generally claiming that he was not aware of the reimbursement to himself, Mr. Jacobs fails to explain what his initials represent on the Barbour letter. While acknowledging in his February 24, 1998, memo that his initials caused Bank personnel to approve the "reimbursement," he seems to suggest that his initialing of the notation authorizing a payment was not intended as an indication of approval of a reimbursement. He, however, fails to clarify what else his initialing of the comments on the letter could represent. His contribution check to the RNC had been written the day before. Thus, absent further evidence, and contrary to Mr. Jacobs' claim, his initials on the Barbour letter dated April 4, 1995, appear to convey his approval of the reimbursement request.

Mr. Jacobs' explanation concerning his subsequent repayment of the reimbursed funds similarly fails to comport with the available evidence. According to Mr. Jacobs, because of the difference of opinion with the RNC concerning the legality of the Bank's contributing directly to the RNC, he wrote a personal check pending a legal opinion clarifying the issues. Once informed, some time after the contribution was made, that the Bank was prohibited from contributing, he states that he took steps to make sure the contribution had come from his personal funds. Only then was he made aware of the earlier reimbursement. However, Mr. Jacobs fails to provide or cite to a legal opinion.<sup>4</sup> Nor does he explain why he did not become aware of the reimbursement at the time those funds were deposited into his account.

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<sup>4</sup> Instead, the OCC examiners found only a generic internal RNC fundraising memorandum addressing the legality of non-federal contributions. This memorandum, dated December 13, 1994, preceded the contribution at issue and does not directly address the legality of the combined contribution. See Attachment 2, at 4-7.

What appears more likely is that Mr. Jacobs' repayment to the Bank resulted from OCC's discovery of the illegal reimbursement.

Despite Mr. Jacobs' arguments to the contrary, his initialing of the handwritten reimbursement request, the clear notation on the official reimbursement documentation that the request was being made "per Mr. Jacobs instructions," and the timing of the reimbursement request, the day immediately after the contribution was made, all cast doubt upon Mr. Jacobs' version of events.

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for an officer or director of a national bank to consent to any contribution or expenditure by the national bank to any political committee. The attached documents implicate Mr. Jacobs in all aspects of the transaction, including suggesting his active participation in seeking the reimbursement of himself. Moreover, it appears from Mr. Jacobs' own admission that he understood that the Bank was prohibited from contributing directly. Nonetheless, Mr. Jacobs still sought reimbursement from the Bank for his \$15,000 contribution in apparent knowing and willful violation of 2 U.S.C. § 441b(a).

Moreover, under 2 U.S.C. § 441f, no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution. By using his name to make the contribution and later authorizing his own reimbursement, Mr. Jacobs appears to have knowingly and willfully violated 2 U.S.C. § 441f.<sup>5</sup> Accordingly, this Office recommends that the Commission find reason to believe that Gary G. Jacobs knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

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<sup>5</sup> In recent years this Office has seen an increasing number of violations of this provision by banks and their officers. Consequently, this Office believes it is necessary for the Commission to pursue these types of violations, especially in cases like the present where the amount at issue is significant and respondents appear to have acted with disregard for the law.



## 2. Mrs. Gary G. Jacobs

As previously noted, the RNC's reports attributed \$7,500 of the combined \$15,000 contribution to Mrs. Jacobs, suggesting that she allowed her name to be used to effect a portion of the prohibited contribution. Accordingly, this Office recommends the Commission find reason to believe Mrs. Jacobs violated 2 U.S.C. § 441f. As will be discussed, this Office intends to conduct an investigation concerning the transactions at issue. Should the evidence indicate that Mrs. Jacobs is not implicated in the reimbursement scheme, this Office will recommend that the Commission take no further action as concerns this respondent.

## 3. Laredo National Bank

The Laredo National Bank as a national bank is prohibited from making contributions or expenditures in connection with any election to any political office. 2 U.S.C. § 441b(a). Because Bank funds were used for the reimbursement of a contribution to the RNC, and because Mr. Jacobs appears to have been acting in his corporate capacity when requesting reimbursement of the contribution amount, this Office recommends that the Commission find reason to believe that Laredo National Bank knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

## 4. Republican National Committee

Pursuant to 2 U.S.C. § 441b(a) it is unlawful for a political committee or other person knowingly to accept or receive a contribution from a national bank. It is similarly unlawful for a political committee to knowingly accept a contribution made by one person in the name of another person. *See* 2 U.S.C. § 441f. According to Mr. Jacobs, the RNC solicited a contribution directly from the Bank, insisting that the Bank was not prohibited from contributing. Although the solicitation of a national bank in itself is not a violation of the Act, sections 441b(a) and 441f prohibit any political committee or any agent of such committee from accepting a contribution

from a national bank or contribution in the name of another. Thus, the involvement of the RNC in the solicitation of the contribution brings into question the committee's possible knowledge concerning the actual source of the \$15,000. Accordingly, this Office recommends that the Commission find reason to believe the Republican National Committee violated 2 U.S.C. § 441b(a) and 441f.

### **III. PROPOSED DISCOVERY**

This Office believes that further discovery is necessary to fully understand Mr. Jacobs' and the RNC's involvement in the transactions at issue. Accordingly, attached for the Commission's approval are Subpoenas and Orders to the Bank, Mr. Jacobs and the RNC seeking information concerning the initial solicitation, the making of the \$15,000 contribution, and the ultimate reimbursement of the contribution.

### **IV. RECOMMENDATIONS**

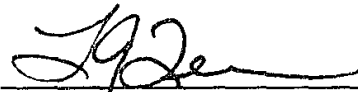
1. Open a MUR.
2. Find reason to believe that Gary G. Jacobs knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.
3. Find reason to believe that Mrs. Gary G. Jacobs violated 2 U.S.C. § 441f.
4. Find reason to believe that Laredo National Bank knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.
5. Find reason to believe that the Republican National Committee and Alec Poitevint, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441f.
6. Approve the attached Factual and Legal Analyses.
7. Approve the attached proposed Subpoena for Production of Documents and Order to Submit Written Answers to Gary G. Jacobs.
8. Approve the attached proposed Subpoena for Production of Documents and Order to Submit Written Answers to Laredo National Bank.

9. Approve the attached proposed Subpoena for Production of Documents and Order to Submit Written Answers to the Republican National Committee.
10. Approve the appropriate letters.

Lawrence M. Noble  
General Counsel

2/25/99  
Date

BY:

  
Lois G. Lerner  
Associate General Counsel

Attachments:

1. OCC Referral Material
2. OCC Documents dated 10/14/98
3. Proposed Factual & Legal Analyses (4)
4. Proposed Subpoena for Production of Documents and Order to Submit Written Answers to Gary G. Jacobs
5. Proposed Subpoena for Production of Documents and Order to Submit Written Answers to Laredo National Bank
6. Proposed Subpoena for Production of Documents and Order to Submit Written Answers to the Republican National Committee



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/VENESHE FEREBEE-VINES  
COMMISSION SECRETARY

DATE: MARCH 3, 1999

SUBJECT: Pre-MUR 362- First General Counsel's Report  
dated February 25, 1999.



The above-captioned document was circulated to the Commission  
on Friday, February 26, 1999.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Elliott	<u>XXX</u>
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for

Wednesday, March 10, 1999.

Please notify us who will represent your Division before the Commission on this  
matter.